



Legal Opinion L-2005-11
May 3, 2005

U.S. Railroad Retirement Board
844 North Rush Street
Chicago Illinois, 60611-2092

Phone: (312) 751-7139
TTY: (312) 751-4701
Web: <http://www.rrb.gov>

TO: Wayne J. Scharnak
Chief of Compensation and Employer Services

FROM: Steven A. Bartholow
General Counsel

SUBJECT: Supplemental Pension Plan
Burlington Northern Santa Fe Railroad Company
401(k) Plan for TCU Employees

This is in reply to your request for a ruling as to whether the Burlington Northern Santa Fe Railroad Company 401(k) Plan for TCU Employees is a supplemental pension plan within the meaning of section 2(h)(2) of the Railroad Retirement Act.

Section 216.42 of the Board's regulations defines a supplemental pension plan, in pertinent part, as follows:

- (a) What is a private railroad pension. * * * A private pension for purposes of this subpart is a plan that:
- (1) Is a written plan or arrangement which is communicated to the employees to whom it applies;
 - (2) Is established and maintained by an employer for a defined group of employees; and
 - (3) Provides for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement or disability. Such a plan is sometimes referred to as a defined benefit plan.
- (b) Defined contribution plan. A plan under which the employer is obligated to make fixed contributions to the plan regardless of profits (sometimes known as a money purchase plan) is a private pension plan. A plan under which the employer's contributions are discretionary is not a private pension plan under this section.

The plan at issue is a written plan, which is communicated to the employees to whom it applies. It is a defined contribution plan but, as you point out, is not funded by employer contributions. Accordingly, this plan does not qualify as private pension plan within the meaning of section 2(h)(2) of the RRA and section 216.42 of the Board's regulations. Accordingly, benefits under the plan will not reduce Burlington Northern Santa Fe Railroad Company employees' supplemental annuities.